IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 182 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FRIENDS SLAT WORKS & ALLIED IND.

Versus

STATE OF GUJARAT & ANR

Appearance:

1. Appeal from Order No. 182 of 1994

MS VASUBEN P SHAH for Appellant No.

MR. KL PANDYA, ASST. GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/10/2004

ORAL JUDGEMENT

1. The appellant of this Appeal from Order is the

original plaintiff of Special Civil Suit No. 103 of 1991 which is pending before the learned Civil Judge, Senior Division, at Bhuj-Kachchh.

2. The case of the plaintiff is that the plaintiff is a partnership firm. The firm was constituted for the purpose of business of salt, gunny bags, salt production, salt export etc. The defendant No. 1 is Department of Electricity Duty looking after the electricity duty, its exemption, charges etc. The plaintiff has also joined Gujarat Electricity Board as defendant No.2. According to the plaintiff, the plaintiff applied to the District Industries Officer for registration of their firm as small scale unit and were granted Permanent Registration No. 04-11-356-Permnent-Small Scale Industry and G.S.I. dated 22.1.1987. The plaintiff also applied to the defendant No.1 for exemption of electricity duty as per rules, and the defendant No.1 granted exemption certificate under Form 'G' by which the plaintiff was granted exemption from payment of electricity duty w.e.f. 18.9.1986 to 28.2.1991.

2.1 It seems that the case of the plaintiff is that during the period between December 1986 to December 1990, the plaintiff had to shift its office from one place to another and during the shifting process, the letter was misplaced. It is further the case of the plaintiff that the defendant No.1, without mentioning any reasons and without explaining anything, cancelled the exemption granted to the plaintiff, vide their letter dated 22.9.1991. The defendant No.2 thereafter raised the bills for electricity duty amounting to Rs.2,82,165-51. The plaintiff, therefore, filed the aforesaid suit for declaration and injunction, by filing a separate application at Exh. 6.

2.2 The learned trial Judge initially granted ad-interim injunction restraining the defendant No. 2 from disconnecting the electric supply to the plaintiff. Subsequently, after hearing both the sides, by the impugned order dated 2.5.1984, the trial court dismissed the injunction application. The trial Court came to the conclusion that Gujarat Electricity Board has right to disconnect the power supply if the plaintiff has failed to pay electricity duty charges as claimed in the supplementary bill. It is the aforesaid order of the trial Court which is impugned in the present Appeal from Order.

3. The Appeal from Order is pending before this Court since last 10 years. At the time of admitting this

matter, the learned Single Judge of this Court directed the appellant to deposit Rs.50,000/_ and on that condition, interim relief was granted in this Appeal from Order. It seems that subsequently the said amount is invested in a Fixed Deposit in the name of the Registrar of this Court, which has been, by order dated 01.08.2002, directed to be renewed from time to time with accrued interest till the final disposal of the Appeal from Order.

4. Learned Assistant Government Pleader, Mr. Pandya submitted that he has no objection if the aforesaid interim arrangement by which the Fixed Deposit is continued, and the suit, which is of 1991, is ordered to be expedited and the injunction granted may be continued till the suit is finally decided. It is further required to be noted that the amount is invested in the name of the Registrar of this Court in a nationalized Bank and if this Appeal from Order is disposed of, it would be proper if the amount is invested in the name of the Registrar of the trial Court so that ultimately the amount in question can be taken care of at the time when the suit is finally disposed of. Mr. Pandya states that he has no objection if the amount lying in the Fixed Deposit with accrued interest is invested in the name of the Registrar of the trial Court. Ms. Brahmbhatt states that the Registrar of this Court may be directed to encash the Fixed Deposit and pay the principal amount with accrued interest to the appellant and the appellant may be permitted to deposit the said amount with the Registrar of the trial Court so that the Registrar of the trial Court can invest the entire amount in a Fixed Deposit in the name of the Registrar of the trial Court till the disposal of the suit.

5. Considering the aforesaid, the registrar of this Court is directed to immediately encash the Fixed Deposit and pay the principal amount with accrued interest to the appellant by an account payee cheque and a yadi of the amount so paid may be sent to the registrar of the trial Court. The appellant shall, within two weeks from the date of receipt of the accounts payee cheque from the Registrar of this Court, deposit the entire amount so paid with the Registrar of the trial Court and the Registrar of the trial Court shall forthwith thereafter invest the entire amount in a fixed deposit in the name of the Registrar of the trial Court, with any nationalized Bank for a period till 31.12.2005. Considering the fact that the Civil Suit is of the year 1991, the trial Court is directed to dispose of the suit latest by 31.12.2005. The trial Court may try to dispose

of the suit even prior thereto since the suit is pending for more than 13 years. It is clarified that the interim relief granted earlier by this Court shall continue till final disposal of the suit; however, if there is any failure on the part of the appellant-original plaintiff in depositing before the trial Court the amount paid to it by the Registry of this Court by encashing the fixed deposit within the stipulated time, the interim relief shall stand automatically vacated.

6. The Appeal from Order is disposed of in the aforesaid lines. No order as to costs.

mathew [P.B.MAJMUDAR, J.]